

5 SEPTEMBER 1946

I N D E X

Of

WITNESSES

Prosecution's Witnesses

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Cross by Dr. KIYOSE

4950

" " Mr. Furness

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I N D E X

Of

EXHIBITS

Pros. Def.
No. No.

Description

For In
Ident. Evidence

430

Letter from U.S. Army Military
Government in Korea; Subject:
Production, Manufacture,
Import and Export of Narcotics
in Korea from 1930 to 1945

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431

Report of the Permanent
Central Opium Board,
Geneva, dated 29 January
1946

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432

Letter from the United States
to the Consul at Geneva,
Switzerland, dated 12
February 1946 including a
Letter from the Chief of
the Drug Control Service
of the Secretariat of the
League of Nations to the

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of

EXHIBITS

(cont'd)

<u>Pros.</u> <u>No.</u>	<u>Def.</u> <u>No.</u>	<u>Description</u>	<u>For</u> <u>Ident.</u>	<u>In</u> <u>Evidence</u>
432 (cont'd)		American Consul at Geneva		4926
433		Letter, enclosure and aide- memoire from the U.S. Ambassador to Japan on the subject "Narcotic Drug Traffic in Occupied Areas of China dated 14 April 1939		4926
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1 Thursday, 5 September, 1946

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3
4 INTERNATIONAL MILITARY TRIBUNAL
5 FOR THE FAR EAST
6 Court House of the Tribunal
7 War Ministry Building
8 Tokyo, Japan

9 The Tribunal met, pursuant to adjournment,
10 at 0930.

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13 Appearances:

14 For the Tribunal, same as before.

15 For the Prosecution Section, same as before.

16 For the Defense Section, same as before.

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20 (English to Japanese and Japanese
21 to English interpretation was made by the
22 Language Section, IMTFE.)
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1 MARSHAL OF THE COURT: The International
2 Military Tribunal for the Far East is now in session.

3 THE PRESIDENT: All the accused are present
4 except OKAWA and MATSUI, who are represented by their
5 respective counsel.

6 Does any counsel desire to mention any
7 matter?

8 Dr. KIYOSE.

9 DR. KIYOSE: I object to the presentation of
10 exhibit 429 as evidence. This exhibit is a letter sent
11 by Chao Seng, President of the High Court of Nanking,
12 to the International Prosecution Section concerning the
13 following points: The document attached thereto is
14 alleged to have been written by Mei Sze Ping, but we
15 cannot find any signature attached to this document.
16 I have investigated the original of this document and
17 cannot find the signature in the original either. The
18 date on which this document was made is missing.

19 Mei Sze Ping was Home Minister in the former
20 Nanking regime, but as this regime has been overthrown
21 we cannot tell at this date whether he wrote it in his
22 capacity as Home Minister or in a more personal capacity.
23 Therefore, I believe that this document should not be
24 accepted as evidence.

25 THE PRESIDENT: Well, the authenticity of the

1 enclosure appears to be vouched for by a high Chinese
2 official who has signed the covering document. The
3 things that Dr. KIYOSE mentions certainly tend to affect
4 the probative value of the document, but, nevertheless,
5 it may have probative value and we may have to admit
6 it for whatever probative value it has; though you
7 should endeavor, Captain Hummel, to meet the objections
8 pointed out by Dr. KIYOSE.

9 MAJOR HUMMEL: If it please the Tribunal, this
10 document that we have here as the original is an extract
11 from the record of the High Court of Nanking relative
12 to the statement made by Mei Sze Ping. The original
13 is in Nanking as part of the record of that court.

14 THE PRESIDENT: You cannot improve the position?
15 The Court will admit it for whatever probative
16 value it has.

17 DR. KIYOSE: Does the prosecutor mean that
18 this document was an extract from some case concerning
19 Mei Sze Ping at the Nanking High Court.

20 MAJOR HUMMEL: This document is the result of
21 an investigation conducted by the Bureau of Investiga-
22 tion and Statistics of the National Military Council
23 of Mei Sze Ping. The result of the investigation was
24 incorporated into the proceedings held by the High
25 Court of Nanking, and this is that much of the

1 proceedings relative to Mei Sze Ping.

2 THE PRESIDENT: Proceed with the reading of
3 the parts you selected.

4 MAJOR HUMMEL: Turning to page 4 of the
5 English copy, which is page 5 of the Japanese copy,
6 I quote:

7 "The opium business in China was the system-
8 atic policy of high ranking officials of the Japanese
9 Government for two reasons. First, the Mongolian-
10 Singkiang Autonomous Government, which was a puppet
11 organization set up by the Japanese following their
12 occupation of Inner Mongolia, sought to solve the finan-
13 cial deficit problems by purchasing opium in Inner Mon-
14 golia, where the people used to grow poppy and sell it
15 at a profit. Second, Japan, in addition to scraping
16 every possible gain in China, looked to opium as a
17 possible way out of her own financial difficulties
18 caused by the war. The money for Mongolian puppet gov-
19 ernment ear-marked for the purchase of opium had to be
20 first remitted to the Finance Ministry in Tokyo, where
21 part of the sums were retained. Although no figures of
22 these retained sums could be estimated as they were kept
23 strictly secret, this remains an undeniable fact. On
24 the other hand, the greater part of the proceeds of
25 the opium sold in Shanghai and other Chinese cities

1 were also sent to Tokyo to be allotted as secret sub-
2 subsidiary funds to TOJO's cabinet as well as to subsi-
3 dize members of the Diet. This was an open secret
4 although it was guarded as strictly confidential, and
5 it was known that some Japanese people at home were
6 also opposed to this notorious policy of TOJO's cab-
7 inet. Evidence for this undeniable fact is, however,
8 difficult to collect. (If the books of the Hung Chi
9 Shan Tang could be obtained, some traces could be
10 found.)"

11 Turning to page 5 of the English copy, which
12 is page 7 of the Japanese copy, I continue:

13 "In December 1943 students held demonstra-
14 tions in Nanking, Shanghai, Hangchow and other cities
15 against opium, smashing a number of opium shops and
16 opium dens established by the Hung Chi Shan Tang.
17 The public sentiment reached its peak, but the Japanese
18 troops dared not step in to give interference. As a
19 result, the Japanese Government sent an economic advisor
20 to the Nanking Government, expressing their willingness
21 to help China if China wanted to restore her pre-war
22 opium suppression measures, on condition that the
23 Nanking Government should consider the fact that 'opium
24 profits were the chief revenue of the Mongolia-Singkiang
25 Autonomous Government.' Three probable reasons for

1 the sudden change of the attitude of the Japanese Gov-
2 ernment regarding the opium business in China were
3 found. First, the TOJO Cabinet had been attacked by
4 the people both inside and outside Japan regarding
5 the use of opium profits for political as well as
6 secret purposes. Second, the Japanese Government wished
7 to lessen the hatred of the Chinese people. The third
8 and the most important factor was that Japan at that
9 time was making scores of times as much income by the
10 control of commodities in occupied China as from opium
11 dealing, so there was no apprehension for lack of funds
12 to defray political and military expenses. Consequent-
13 ly, the Nanking Government had to consider carefully
14 the following points in face of the Japanese request:

15 "1. Since opium revenue was the chief source
16 of income of the Mongolian Government, and if Mongolian
17 Government could dump its opium on Nanking as a result
18 of Japanese pressure, the Nanking Government would
19 become an agent for selling opium imported from Mon-
20 golia.

21 "2. The income of the Nanking Government was
22 then enough to cover all expenses and the opium revenue
23 was not considered as an important item. If the Jap-
24 anese relied on increased collection of the opium tax
25 as ground for lowering other tariffs in favor of

1 Japanese merchants in China, the result would be
2 much worse.

3 "3. Negotiations with the Japanese during
4 many years proved to be painful. On every occasion
5 they declared at first that they would never inter-
6 fere. But later on they invariably interposed ob-
7 structions on every turn, making it impossible for
8 the Chinese authorities to carry on their duties.
9 I am afraid there could be no exception to the opium
10 suppression problem.

11 "Therefore the Nanking Government took the
12 following stand during the negotiations with the
13 Japanese on the opium problem:

14 "1. The opium suppression policy of the
15 former Military Council must be maintained and the
16 five-year suppression plan, which was after operating
17 for two years suspended on account of the war, must
18 be continued. Opium evil must be eradicated within
19 three years, beginning from April 1944.

20 "2. According to the pre-war regulations,
21 the planting of poppy in Inner Mongolia should be
22 prohibited within a definite period of time. Those
23 pre-war measures could, of course, be temporarily
24 allowed to continue. But the amount produced must
25 be drastically reduced. Opium imported from Mongolia

1 which amounted to 3,000,000 ounces per annum by the
2 Hung Chi Shan Tang must be reduced at least by one
3 half.

4 "3. Rules which existed prior to the war
5 regulating producers, dealers and addicts of opium,
6 enforced by the former Council of Military Affairs,
7 should be likewise observed and the Japanese author-
8 ities should lend a helping hand in this matter,
9 giving no protection to either Japanese or Chinese
10 ruffians.

11 "4. Japan should help China to stem
12 opium smuggling, otherwise opium suppression would
13 be impossible."
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1 "Following the negotiations, Japanese
2 authorities accepted the conditions completely. Wang
3 Chin-wei, Chairman of the Council of Military Affairs
4 happened to be in Japan for medical treatment at that
5 time, so the Council of Military Affairs was unable
6 to take charge of the opium suppression program as it
7 used to do. Besides, Cheng Kung-po, Acting Chairman
8 of the Council of Military Affairs, and concurrently
9 Mayor of Shanghai, was too much occupied to take care
10 of this opium suppression task. Consequently, it was
11 assigned to the Ministry of Interior. Nevertheless,
12 regulations stipulated by the Council of Military
13 Affairs were observed. The former opium agency was
14 operated by specially licensed merchants under govern-
15 ment supervision. This agency was taken over by the
16 Central Opium Suppression Bureau for fear that conti-
17 nuance of the former plan would entail manipulation
18 again by Satomi and his associates. Other functions
19 of the Bureau remained the same as those of the former
20 Inspector General of Opium Suppression. The Opium
21 Suppression work from 1 April 1944 to the end of the
22 same year is stated as follows:

23 "1. Since the publication of opium suppression
24 regulations in March 1944, all narcotic producing
25 organs in Shanghai, following the discovery of a

1
2 number of heroin manufacturies, vanished by themselves.
3 The same condition prevailed in Nanking where, following
4 the execution of Tsao Yu-chen, a notorious narcotic
5 trader and secret service man of the Japanese Gendar-
6 merie, opium and narcotic dealers gradually disappeared
7 in the Nanking-Shanghai Area and the Japanese stopped
8 giving open support to opium trafficking.

9 "2. From April 1944 to the end of the year,
10 the average monthly import of opium from Inner Mongolia
11 was less than 100,000 ounces - less than 40% of the
12 monthly import in the Hung Chi Shan Tang's time.

13 "3. The opium smuggling continued to be
14 unchecked. But it was not more rampant than before - a
15 fact which showed that the addicts were not increasing
16 in number (because Government-controlled opium was
17 reduced by more than 50%).

18 "4. Two opium suppression hospitals were
19 established: one in Nanking and one in Shanghai. Pub-
20 lic and private hospitals in various cities and dis-
21 tricts were intrusted with the opium suppression
22 service.

23 "5. The registration of opium addicts was
24 accomplished.

25 "6. Opium shops and opium dens in all cities
and towns were ordered to be closed down.

1 "Taxation on opium was not aimed at for reve-
2 nue purposes by the Nanking Government. Nevertheless,
3 the total opium tax collected between April 1944 and
4 the end of the year amounted to between \$40,000,000 and
5 \$50,000,000 and was handed over to the Ministry of
6 Finance. This could be checked in the files and books."

7 The prosecution next offers in evidence its
8 documents 9555 and 9555-B and requests that the Court
9 be permitted to give one exhibit to these two documents.

10 THE PRESIDENT: Admitted on the usual terms.

11 DEPUTY CLERK OF THE COURT: Prosecution's
12 document No. 9555 and 9555-B will be given exhibit
13 No. 430.

14 (Whereupon, the documents above
15 referred to were marked prosecution's exhibit
16 No. 430, and were received in evidence.)

17 MAJOR HUMMEL: Prosecution's document 9555-B
18 is a letter from United States Army **Military Government**
19 in Korea; subject: Production, Manufacture, Import
20 and Export of Narcotics in Korea from 1930 to 1945,
21 which has an enclosure consisting of statements A, B,
22 and C, which is prosecution's document 9555.

23 If the Tribunal please, I will not read any-
24 thing from 9555-B, but call particular attention of
25 the Tribunal to pages 4, 5 and 6 of document 9555,

1 which is on pages 6, 7 and 8 of the Japanese copy.

2 Referring to the bottom of page 4, paragraph (2):

3 "Manufacture of narcotic drugs by the Monopoly
4 Bureau Medicinal Drug Factory from 1935 to 1945 inclu-
5 sive (all weights in kilograms)."

6 Continuing on page 5, for the years 1938 and
7 1939 in the column marked Heroin are the figures
8 1244.000 kilograms and 1327.100 kilograms, respectively.

9 Continuing paragraph (3):

10 "Exportation of raw opium and narcotic drugs
11 by the Korean Monopoly Bureau." And turning to page 6:
12 "b. Morphine hydrochloride and heroin (diazetylmor-
13 phine hydrochloride) (Weight in kilograms)." For the
14 years 1938 and 1939, in the column marked Heroin, the
15 figures 1200.000 and 1200.000, respectively, consigned
16 to the Manchukuo Monopoly Bureau.

17 The prosecution next offers in evidence its
18 document 9553, report of the Permanent Central Opium
19 Board, Geneva, 29 January 1946.

20 THE PRESIDENT: Admitted on the usual terms.

21 DEPUTY CLERK OF THE COURT: Prosecution's
22 document No. 9553 will receive exhibit No. 431.

23 (Whereupon, the document above
24 referred to was marked prosecution's exhibit
25 No. 431, and was received in evidence.)

1 MAJOR HUMMEL: (Reading) "My dear Commissioner:

2 "The following is a statement of the manufac-
3 ture of diacetylmorphine in Korea declared by the
4 Japanese Government and published by the Board in its
5 reports to the League of Nations:

6 "1935-39 nil

7 "Yours sincerely, (Signed), Secretary, Permanent
8 Central Opium Board."
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1 Prosecution next offers in evidence document
2 1154.

3 THE PRESIDENT: What is it?

4 MAJOR HUMMEL: A letter from the United
5 States to the Consul at Geneva, Switzerland, dated
6 February 12, 1946, including a letter from the Chief
7 of the Drug Control Service of the Secretariat of the
8 League of Nations to the American Consul at Geneva.

9 THE PRESIDENT: Admitted as before.

10 MAJOR HUMMEL: (Reading)

11 "The Honorable,

12 "The Secretary of State

13 "Washington, D. C.

14 "I have the honor to invite reference to
15 the Consulate's confidential despatch No. 106 of
16 January 18 in reply to the Department's telegram
17 No. 328 of November 27, 6 p.m. 1945, requesting
18 that there be obtained and forwarded from the
19 League authorities, if agreeable to them, an
20 official statement that the Japanese Government
21 did not subsequent to 1939 present reports, estimates
22 and statistics required by International Drug
23 Conventions.

24 "The Chief of the Drug Control Service
25 of the Secretariat of the League of Nations has

1 now replied to the Consulate's inquiry, approval
2 thereof having been obtained from the Acting
3 Secretary General of the League. With the idea
4 of supplying the War Crimes Office with the most
5 useful documentation, a copy of the full text of
6 the reply of the Chief of the Drug Control Service
7 is transmitted herewith. This reply which would
8 appear to be self explanatory, taken together with
9 the material previously supplied by the Permanent
10 Central Opium Board constitutes a full answer to the
11 Department's telegram under reference.

12 "Respectfully yours,

13 (Signed) "Howard Elting, Jr.

14 American Consul"
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1 Continuing on page 2:

2 "LEAGUE OF NATIONS

3 "Dear Mr. Elting,

4 "I would refer to your letter dated Decem-
5 ber 12, 1945 (reference 811.4), asking if the Japan-
6 ese Government did, subsequent to 1939, present any
7 reports on illicit traffic, annual reports, esti-
8 mates and statistics, required by the International
9 Drug Conventions.

10 "As statistics come within the competence
11 of the Permanent Central Opium Board, I shall limit
12 my answer to annual reports, reports on illicit
13 traffic and estimates.

14 "No annual report, as provided under Article
15 21 of the Convention of July 13th, 1931 has been
16 received in regard to Japan, and/or her territories
17 in respect of any year subsequent to the reports
18 covering the year 1938.

19 "No reports of cases of illicit traffic
20 discovered by Japanese authorities have been re-
21 ceived from the Japanese Government under the terms
22 of Article 23 of the above-mentioned Convention,
23 in respect of any year subsequent to 1939.

24 "As for annual estimates of drug require-
25 ments provided under Article 2 of the Limitation

1 Convention of 1931, the last estimates received
2 from the Japanese Government refer to the year 1940
3 as regards Japan proper, and to the year 1941 for
4 the Japanese territories (Korea, Formosa, Kwantung
5 Leased Territory, and the Islands of the Pacific
6 held under Japanese mandate).

7 "I am, dear Mr. Elting,

8 "Yours very truly,

9 "(Signed Bertil A. RENBORG

10 "Chief of the Drug Con-
11 trol Service of the
12 Secretariat of the
13 League of Nations, Sec-
14 retary of the Supervi-
15 sory Body."
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1 THE PRESIDENT: Mr. Mantz, did you call out
2 that number?

3 CLERK OF THE COURT: No, sir.

4 THE PRESIDENT: Well, I admitted it. You
5 did not hear me, apparently.

6 CLERK OF THE COURT: Prosecution's document
7 No. 1154, which was just read, received exhibit No.
8 432.

9 (Whereupon, prosecution's exhibit
10 No. 432 was received in evidence.)

11 THE PRESIDENT: Yes.

12 MAJOR HUMMEL: Prosecution next offers in
13 evidence its document 9536: a letter, enclosure, and
14 aide-memoire from the United States Ambassador to
15 Japan on the subject, "Narcotic Drug Traffic in Occu-
16 pied Areas of China," dated April 14, 1939.

17 THE PRESIDENT: Admitted on the usual terms.

18 CLERK OF THE COURT: Prosecution's document
19 No. 9536 will receive exhibit No. 433.

20 (Whereupon, prosecution's exhibit
21 No. 433 was received in evidence.)

22 MAJOR HUMMEL: (Reading)

23 "The Honorable
24 The Secretary of State,
25 Washington.

1 "Sir:

2 "I have the honor to acknowledge the re-
3 ceipt of the Department's instruction No. 1661 of
4 February 16, 1939, and enclosures, relating to the
5 situation in China with respect to the traffic in
6 narcotics and directing the Embassy, after consul-
7 tation with the British Embassy, to present to the
8 Japanese Foreign Office an aide-memoire substantially
9 in the form of the draft transmitted with the
10 Department's instruction under acknowledgment.

11 "Inquiry was made of the British Embassy
12 whether instructions had been received from the
13 British Foreign Office to take action along the
14 lines proposed in the Department's instruction. As
15 the Department's instruction was received on March
16 11th, and the British Embassy notified us on April
17 10th that instructions had been received from the
18 British Foreign Office to inform us in the event of
19 inquiry that the matter was still under investiga-
20 tion by the British Government, it was decided to
21 carry out the Department's instruction without
22 further delay. Accordingly, the aide-memoire, with-
23 out alteration, and its enclosure, were presented
24 to the Foreign Office on April 13, 1939.

25

1 "The official of the Foreign Office to
2 whom the aide-memoire and enclosure were presented
3 had no comment to offer other than that the contents
4 would be studied and a reply made in due course.

5 "Copies of the aide-memoire and enclosure
6 are transmitted herewith. A copy with enclosure had
7 been furnished the British Embassy.

8 "Respectfully yours,

9 (Signed) "Joseph C. Grew."

10 "Enclosure no. 1 to despatch
11 no. 3830 of April 14, 1939
from the Embassy at Tokyo

12 "The American Embassy to the Ministry of Foreign Affairs.

13 "EMBASSY OF THE
14 UNITED STATES OF AMERICA

15 "STRICTLY CONFIDENTIAL

16 "AIDE-MEMORIE

17 "The Government of the United States ap-
18 preciates the efforts of the Japanese authorities and
19 of the Japanese companies operating ships in trans-
20 Pacific services in connection with the suppression
21 of the illicit traffic in narcotic drugs between
Japan and the United States.

22 "In the parts of China now under Japanese
23 military control, however, according to reports sub-
24
25

1 mitted by American officials, Japanese in authority
2 are not taking effective measures to cooperate in
3 the suppression of the abuse of narcotic drugs and
4 illicit traffic therein.

5 "The situation existing in the Japanese-
6 controlled areas in China, as described in the above-
7 mentioned reports received from American officials,
8 is indicated in an enclosure to this aide-memoire
9 entitled 'The Narcotics Situation in the Japanese-
10 Controlled Areas in China'."

1 With the Court's permission, I will not read
2 this next paragraph. It has already been read into
3 evidence. Turning to page 4, the first paragraph:

4 "In urging upon the Japanese Government
5 the importance of there being exercised by the
6 Japanese Government the restraining influence
7 which it is in a position to bring to bear upon
8 its nationals in the occupied areas of China and
9 upon the regimes which have been established there-
10 in, the Government of the United States desires
11 to point out that the situation existing in the
12 occupied areas is one of deep concern to it because

13 "1. The evidence in the possession of
14 this Government indicates that the heroin found
15 in the illicit traffic in the United States has
16 since 1935 come in large measure from the Japanese
17 Concession in Tientsin.

18 "2. Practically all of the smoking opium
19 found in the illicit traffic in the United States
20 comes from China and is a blend of Chinese and
21 Iranian opiums. Part of it is prepared in or
22 near Shanghai, part in South China and a little
23 in North China. This type of smoking opium has
24 practically no market in China and is put up solely
25 for the illicit traffic in America. Recent large

1 seizures in the continental United States, at
2 Honolulu, and at Manila point to a substantial
3 increase in the illicit shipment of smoking
4 opium from the Far East to the United States,
5 the amounts of such seized during the last six
6 months of 1938 having been approximately five-
7 sixths of the total amount seized during the year."

1 Turning to page 7. With the Court's per-
2 mission, I will not read page 6 nor page 7 down to
3 the end of sub-paragraph (5). That has already been
4 read in evidence.
5

6 "Since last June, the American Government
7 has continued to receive from official sources addi-
8 tional alarming information in regard to the traffic
9 in narcotic drugs in those parts of China controlled
10 by Japan, as follows:

11 "Manchuria and Jehol:

12 "The Director of the Opium Section of the
13 Municipality of Harbin informed the press on May 4,
14 1938 that the number of unlicensed opium dens in the
15 city of Harbin was estimated at about 1,000 as
16 against 76 that were licensed.

17 "The authorities in Pinkiang Province (in
18 which Harbin is located) estimated in June 1938 that
19 in the Province there were approximately 2,000 Japan-
20 ese and Koreans addicted to opium, morphine, or
21 heroin.

22 "The Opium Administration Section of the
23 Department of People's Welfare of 'Manchukuo' an-
24 nounced on August 23, 1938 that reports received from
25 provinces and cities, in connection with the 10-year
anti-opium campaign, showed that the total number

1 of registered addicts in Manchuria and Jehol was
2 585,267.

3 "Tientsin:

4 "In a report from the American Consul
5 General at Tientsin dated November 3, 1938 it is
6 stated that, notwithstanding an announcement in the
7 local press to the effect that all opium dens in the
8 Japanese Concession of Tientsin had been closed on
9 October 1, many small places in that Concession con-
10 tinue to dispense opium, that the larger dens in the
11 Japanese Concession ~~were~~ closed.".....

1 THE PRESIDENT: We cannot follow you.

2 MAJOR HUMMEL: That is on top of page 3, sir.

3 THE PRESIDENT: There is no "3" here. It has
4 been omitted. It is in the wrong place. It is before
5 page 2 now.

6 MAJOR HUMMEL: I am very sorry, sir. As
7 I turn the page, if your Honor please, I will give
8 the photostatic page number rather than the page
9 number of the document itself.

10 THE MONITOR: Major Hummel, will you please
11 give us a little time to catch up with you? When
12 you pick a certain paragraph, please give us time to
13 find that paragraph because it is not marked; just a
14 little time, about a minute or so, and then we can
15 signal.

16 MAJOR HUMMEL: Yes.

17 (Reading continued)... "but that those dens
18 which had been operating in the Japanese Concession
19 are now operating in the areas nominally controlled
20 by Chinese outside the Japanese Concession, and that
21 the number of such places operating is conservatively
22 estimated at 500. According to a reliable informant
23 at Tientsin, all varieties of habit-forming drugs
24 known to the Japanese trade continue to be readily
25 purchasable in numerous places in the Japanese

1 Concession.

2 "The daily newspaper, Yungbao, published
3 in the Chinese language at Tientsin and controlled by
4 the Japanese authorities, contained the statement in
5 its issue of November 12, 1938 that the Tientsin
6 Branch Consolidated Tax Office had received instruc-
7 tions from its head office in Peiping to permit the
8 operation of an additional 23 opium dens, bringing
9 the total of licensed opium dens in the nominally
10 Chinese-controlled areas of Tientsin to 189.

11 "Peiping:

12 "It is reliably reported that the only
13 restriction existing in Peiping in regard to estab-
14 lishing shops for the sale and/or smoking of opium
15 is the payment of taxes. As a result, there were
16 estimated to be some 300 such establishments in
17 Peiping in October 1938. Heroin was also being sold
18 at that time at many places in the city with no
19 evidence of any effort being made to stamp out the
20 trade.

21 "Tsinan:

22 "At Tsinan, since the Japanese occupation,
23 the Tsinan Branch of the Consolidated Tax Bureau has
24 permitted the sale of opium publicly upon the payment
25 of certain taxes. At the end of September 1938 there

1 were four shops authorized to sell raw opium and 40
2 shops authorized to sell opium paste. By the end of
3 November 1938 the number of shops selling opium paste
4 had increased from 40 to 136. It was reported that,
5 during November 1938, raw opium to the amount of
6 100,000 taels arrived at Tsinan via the Tsin-pu
7 Railway from the north and that 10,000 taels of that
8 amount were transshipped at Tsinan to other large
9 cities and towns in the interior.

10 "Nanking:

11 "The American Embassy at Nanking has for-
12 warded copies of a letter dated November 22, 1938 by
13 Professor M. S. Bates, in regard to the narcotics
14 situation in Nanking. In the opinion of the Embassy,
15 Dr. Bates is an experienced investigator and a man
16 of unquestioned integrity. He states that, prior to
17 1938, the present generation had no known large supply
18 and consumption of opium in Nanking nor open sale in
19 a way to attract the poor and ignorant, especially
20 during the five years preceding 1938, and that heroin
21 was practically unknown. Dr. Bates' investigation
22 disclosed that, as a result of changes brought about
23 in 1938, legalized opium sales in Nanking amounted to
24 \$2,000,000 monthly and that heroin sales in the area
25

1 of which Nanking is the center amounted to \$3,000,000
2 monthly (Chinese currency). Dr. Bates reported that,
3 according to a private estimate, there were at least
4 50,000 heroin addicts in a population of 400,000. He
5 stated that there were many young people of both sexes
6 among the addicts; that the public opium system in
7 Nanking, the major supplies for which are reported as
8 coming from Dairen through Shanghai, was controlled
9 by the 'Opium Suppression Bureau' which is under the
10 Finance Office of the Nanking Municipal Government;
11 and that the Bureau's regulations and by-laws were
12 concerned mainly with bringing all private trade and
13 consumption into the revenue net. Dr. Bates also
14 stated:

15 "It is commonly reported that the
16 Special Service Department of the Japanese Army has
17 close and protective relations with the semi-organized
18 trade in heroin.'

19 "He further pointed out that:

20 "There is general testimony that a
21 good deal of the wholesale trade is carried on by
22 Japanese firms which outwardly deal in tinned goods
23 or medicines, but handle heroin through rooms in the
24 rear.'

25

1 "Shanghai:

2 "The American Consulate General at Shanghai,
3 in forwarding copies of a series of articles by Mr.
4 C. D. Alcott which were published in The China Press
5 on December 4,5,6, and 7, 1938, observed that the
6 articles were believed to give a fairly accurate
7 picture of the present narcotics situation in Shanghai,
8 as much of the factual matter contained therein was
9 understood to have been obtained from the Narcotics
10 Section of the Shanghai Municipal Police and from the
11 records of the Special District Courts."

1 Continuing on page 11.

2 THE PRESIDENT: That is page 10.

3 MAJOR HUMMEL: (Reading)

4 "The Consulate General added that the
5 traffic was most active in areas controlled by the
6 Japanese; that no visible efforts were being made
7 by the Japanese or the new administrations to
8 suppress the traffic; and that the traffic appeared
9 likely to increase in Japanese controlled areas
10 around Shanghai.

11 "Pointing out that the application and
12 enforcement of the drastic anti-narcotic laws and
13 regulations promulgated by the National Government
14 during the latter part of 1938 had resulted in a
15 marked diminution in the traffic in heroin and
16 morphine and in some decrease in the opium trade,
17 Mr. Alcott writes that, since the Shanghai areas
18 came under Japanese control, heroin, morphine, and
19 similar derivatives have been reintroduced into the
20 area; that the importation and distribution of these
21 drugs have been steadily increasing; that between
22 60 and 70 stores located in areas immediately
23 adjacent to the International Settlement and the
24 French Concession are now selling these drugs;
25 that a total of about \$1,500,000 (Chinese currency)

1 is being spent monthly by the addicts for narcotic
2 drugs, of which \$250,000 is spent for heroin; that
3 an increasing number of coolies and poor laborers
4 are using heroin and derivatives; that Jehol opium
5 is now the chief source of supply for cheap drugs
6 in the Shanghai area and that most of the heroin
7 comes from Dairen and Shanhaikwan; that no effort
8 is being made by the Japanese authorities or the
9 Chinese administrations under their direction to
10 suppress the traffic in narcotics in the areas
11 controlled by them; and that, in fact, there is
12 considerable evidence to show that many Japanese
13 are deeply involved in the importing and sale of
14 opium, heroin and other derivatives, including,
15 according to some authorities on the subject, a
16 group within the Special Affairs Organ of the
17 Japanese military.

18 "The alarming description given by Mr.
19 Alcott of conditions in the Shanghai area is in
20 large measure substantiated by information received
21 from other reliable sources."
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1 The prosecution next offers in evidence its
2 document 9556: a letter from the Department of State
3 to Lieutenant Colonel Hornaday, dated December 26,
4 1945.

5 THE PRESIDENT: Admitted on the usual
6 terms.

7 CLERK OF THE COURT: Prosecution's document
8 No. 9556 will receive exhibit No. 434.

9 (Whereupon, prosecution's exhibit
10 No. 434 was received in evidence.)

11 MAJOR HUMMEL: (Reading)

12 "My dear Colonel Hornaday:

13 "Reference is made to despatch no. 3830,
14 dated April 14, 1939, from the American Embassy at
15 Tokyo, in regard to the traffic in narcotic drugs
16 in the occupied areas of China.

17 "For your information and use, the records
18 of this Department disclose that the Japanese Govern-
19 ment did not acknowledge the receipt of or make re-
20 ply to the aide-memoire which is enclosure no. 1 to
21 the above-mentioned despatch.

22 "Sincerely yours,

23 "/s/ Otis E. Mulliken
24 "Chief, Division of International
25 Labor Social and Health Affairs"

1 That concludes the presentation of the
2 opium and narcotics phase of this case.

3 THE PRESIDENT: What about the witness that
4 is to be called whose affidavit we have?

5 MAJOR HUMMEL: If your Honor please, the
6 prosecution sent a summons out yesterday for the
7 witness MARIOKA whose affidavit was introduced, and
8 we do not know where he is at the present time. We
9 have contacted the Japanese Liaison Office and --

10 MR. KEENAN: Mr. President.

11 THE PRESIDENT: Mr. Chief Prosecutor.

12 MR. KEENAN: I have been informed that the
13 affiant, MARIOKA, whom we sought to bring into Court,
14 has been interrogated by defense counsel, and I am
15 now seeking the facts to determine in whose custody
16 he now is. We are informed that he has been in this
17 building and hope to produce him in a few moments.

18 We wish, Mr. President, to make it abundantly
19 clear that this affiant was interrogated on the 24th
20 of March, 1946 when a special trip was made to China,
21 and we found that he was reported to be at Peiping.
22 His affidavit was taken with a view of introducing
23 that in evidence in accordance with what we thought
24 were the provisions of the Charter; and we had no con-
25 tact of any kind, nature or description with him after

1 that date. He was a resident of Peiping at that
2 time, and we had no information as to his intention
3 to remain in China or return to Japan for repatria-
4 tion. Together with many thousands of other Japan-
5 ese he has been repatriated without any knowledge
6 whatsoever on the part of the International Prosecu-
7 tion Section.

8 How the defense learned of his presence,
9 whether it was through the Central Liaison Office or
10 its representatives, we know not, but we were not in-
11 formed of his presence in Japan until the moment that
12 the statement was made in Court by defense counsel.
13 And for obvious reasons now, while we in an orderly
14 manner asked for a subpoena to be issued through the
15 processes of this Court and attempted to comply with
16 the direction of the Court, we find him already in
17 the hands of defense counsel, and I believe he has
18 been with them the greater part of last night. We
19 have never seen him; and, attempting to get him, we
20 find he is here already. The incident in and of
21 itself of this particular witness if not of the im-
22 portance, perhaps, to justify the taking of any time,
23 but it is of grave importance that the position of
24 the prosecution be not misunderstood; that we are
25 hiding any testimony or any witnesses, or, as far as

1 we know, without pious utterances, attempting in any
2 manner to present anything other than a fair case at
3 all times to this Tribunal.

4 In summary, we have never seen him or heard
5 from him directly or indirectly since the 24th of
6 March, 1946, or approximately that date. He has, we
7 have been informed, been in the hands of the defense,
8 and we are perfectly willing to put him on the stand
9 at this moment and ask to have him brought in by
10 those who know most and best about his whereabouts.
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1 THE PRESIDENT: Doctor KIYOSE.

2 DR. KIYOSE: Since there seems to be some
3 misunderstanding concerning the affiant MORIOKA, I
4 wish to be permitted to say a few words. Yesterday
5 in this Court I gave Prosecutor Sutton the affiant
6 MORIOKA's address, but as I would be responsible if the
7 address was incorrect or something, I sent a messenger
8 to the address which I had given to Mr. Sutton.

9 THE MONITOR: "In order to ascertain whether
10 he really did live there or not."

11 DR. KIYOSE (Continuing): Late last night
12 having ascertained that MORIOKA was actually in the
13 place he was supposed to be, I felt very relieved.
14 This morning, as my house is on the way to this Court
15 from MORIOKA's house, MORIOKA called at my house on
16 his way to the Court. On MORIOKA's subpoena it was
17 required that he attend this Court -- that he be pres-
18 ent in this building in room No. 38 by eleven o'clock
19 this morning. I had to be at this building by nine
20 o'clock and although that would mean the time was
21 considerably earlier than the time he had to appear,
22 since he desired to know something about this building --
23 since he did not know his way around in this building,
24 I proposed that he come with me. I believe that until
25 eleven o'clock he is waiting in one of defense counsel's

1 room or somewhere else and that at eleven o'clock he
2 will appear in room 38.

3 MR. KEENAN: Mr. President, with great
4 respect I suggest that counsel for defense might be
5 informed, including Japanese counsel, that when this
6 Court directs the prosecution to produce a witness,
7 we will do it and we do not require the assistance of
8 any of the defense counsel. We will perform our duty
9 as we are called upon by the Court to so perform it.

10 THE PRESIDENT: Major Furness.

11 MR. FURNESS: Mr. MORIOKA has not been in
12 custody at all. He has been in my room; I have been
13 talking with him. He has not in any sense been concealed
14 or prevented from coming in. I have not been here
15 before so I do not know what the discussion has been,
16 but I want to make that statement. He can come in
17 any time at all.

18 MR. KEENAN: Mr. President, may I ask that
19 the Court direct whoever has him, in whomever's office,
20 that he be brought forthwith into this courtroom and take
21 the witness stand under these circumstances as our wit-
22 ness for cross-examination.

23 THE PRESIDENT: Well, in view of your attitude,
24 we will direct that, Mr. Chief Prosecutor; but seeing
25 that he did not come to you and was not brought to you

1 by the defense but remained in association with them,
2 it may well be that no obligation rests on you to call
3 him now. However, you have decided to do so and the
4 Court acquiesces.

5 You say a subpoena was issued, Mr. Chief
6 Prosecutor?

7 MR. FURNESS: The witness' subpoena, I
8 think, reads as eleven o'clock, so as far as I know
9 no one has been delinquent or at fault.

10 MR. KEENAN: Mr. President, this Court
11 already issued an order or a direction with which we
12 attempted to comply and with reference to whose
13 witness he is -- since we did produce an affidavit
14 and since he is here in accordance with the Court's
15 general ruling, we believe he should be produced.
16 Now, whatever testimony he gives I suppose will be
17 confined to his testimony in chief or matters
18 related thereto as far as he is our witness. Common
19 sense would dictate that thereafter if the defense
20 wishes to use him for other purposes, he ought to be
21 their witness whenever he is called. May we have him
22 brought in?

23 MR. FURNESS: He will come in. I do not
24 like the use of the word "brought" in. He will come
25 in without being brought in.

1 THE PRESIDENT: The rule that cross-
2 examination must be confined to matters arising out
3 of the examination in chief will apply, Mr. Chief
4 Prosecutor. Let the witness take the stand.

5 We will recess now for fifteen minutes.

6 (Whereupon, at 1043 a recess was
7 taken until 1100, after which the proceedings
8 were resumed as follows:)

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MORIOKA

CROSS

0 1 MARSHAL OF THE COURT: The International
o 2 Military Tribunal for the Far East is now resumed.
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S U S U M U M O R I O K A , called as a witness on
behalf of the prosecution, being first duly sworn,
testified through Japanese interpreters as follows:

THE PRESIDENT: Major Furness.

MR. FURNESS: If the Court please, we are not
certain whether the prosecution wants to qualify the
statement of the witness or not. Yesterday the affi-
davit was simply read; so we don't know whether to
begin our cross-examination or not.

THE PRESIDENT: He was called for the express
purpose of cross-examination.

Dr. KIYOSE.

DR. KIYOSE: Will you have exhibit 401, which
is the affidavit of this witness, shown to the witness?
May I have the Japanese translation also shown to him?

(Whereupon, two documents were handed
to the witness.)

THE PRESIDENT: He appears now to have care-
fully read the affidavit in both languages.

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MORIOKA

CROSS

CROSS-EXAMINATION

1

2 BY DR. KIYOSE:

3 Q Is the affidavit which you have just read
4 the one which you signed?5 A So far the one that was in Chinese, I am quite
6 sure that I signed; but the text in Japanese, I read
7 this for the first time here. So far as I can see the
8 Chinese text is very different from the Japanese.9 Q Then does the original Chinese text truly
10 represent what you said?

11 A Once more, please.

12 Q I am speaking of the original Chinese text.
13 Does it truly represent what you said?14 A On the whole it does, but the questions and
15 answers exchanged at that time were far longer than
16 appears on this affidavit; and this affidavit is only
17 a part of those questions and answers.18 Q I wish to question you on the points on which
19 you received interrogation from Prosecutor Sutton and
20 Chiu, but I shall confine my questions to those appear-
21 ing on the affidavit -- in the affidavit.22 The second paragraph from the end of this
23 affidavit, you have stated the policies of General
24 TERAUCHI, General SUGIYAMA, General TADA, and General
25 OKAMURA vis-a-vis the Chinese Incident. May I accept

MORIOKA

CROSS

1 your words here as correct?

2 A It is as it is written in the Chinese text.

3 Q In the Chinese text -- does the Chinese text
4 state that all these generals strongly urged the
5 prosecution of the Chinese Incident?

6 A In the Chinese text, there is the word --
7 phrase "on the field." By this I mean that all the
8 commanders on the field advocated the prosecution of
9 the war. In the Chinese text there is a phrase,
10 "on the field." By this I mean --

11 THE MONITOR: In the Chinese text there is
12 a Chinese character literally meaning "attached to the
13 ground." This I interpret as meaning "on the field,"
14 or "on the spot" -- "at the spot," and as the commander
15 of the front line army on the field, I maintained they
16 advocated the prosecution of the war -- battle.

17 Q Then may I understand that you did not mean
18 that these generals advocated war against China before
19 the war actually began?

20 A It is as you say.

21 Q In the same section you have testified con-
22 cerning General TOJO and the war against America and
23 Great Britain. What do you mean by the statement you
24 made? If you remember the questions and answers ex-
25 changed at the time, please give them to me.

MORIOKA

CROSS

1 A At this time I was asked by the prosecution:
2 "Who is responsible for the China Incident?" I replied,
3 "KONOYE." Then they asked, "Who is responsible for
4 the Pacific War?" And I replied, "TOJO."

5 Q Then is it your understanding that the Chinese
6 text gives in brief the questions and answers exchanged
7 as you have stated?

8 A What you say is only a part of the questions
9 and answers -- questions asked and answers given at
10 that time. What you have just said about SUGIYAMA
11 et cetera, and then what is written also -- after what
12 you have stated about SUGIYAMA, et cetera, and the next
13 question, there is a big gap which has been omitted; and
14 there were, I believe, other questions which should be --
15 which were asked between the interval.

16 THE MONITOR: Slight correction: "Although
17 it is in the same paragraph about SUGIYAMA, et cetera,
18 and TOJO, between these two questions there were
19 several other questions asked and answers given. How-
20 ever, that seems to be omitted here.

21 Q Concerning this statement about TOJO, may I
22 understand that -- take it back.

23 Did you mean that TOJO urged the prosecution
24 of war, urged war against America and Great Britain
25 before the outbreak of this war, or do you mean, as

MORIOKA

CROSS

1 in the case of Generals TERAUCHI, SUGIYAMA, et cetera,
2 that he was in favor of prosecuting the war after it
3 had already begun?

4 A By this statement I meant that -- by the
5 statement I meant that it was made after the start of
6 the Pacific War. As I was not in Japan at the time, I
7 am not familiar with policies of the Japanese Govern-
8 ment at home.

9 THE MONITOR: Slight correction: "By this
10 statement I meant after the outbreak of the Pacific War.
11 Now as to the policies of TOJO before the war, I was
12 away from Japan, so I could not possibly know what it
13 was.

14 Q Did you have several opportunities to meet
15 TOJO before and during the Pacific War?

16 A I did not have many opportunities to meet TOJO.
17 I believe it was in May, before the outbreak of the
18 Pacific War, I met him at a conference of division com-
19 manders.

20 Q Did you ever have an opportunity to listen
21 to TOJO's ideas concerning the international situation?

22 A No.

23 Q Next, in the last paragraph of your affidavit
24 you have testified concerning opium. I shall ask a
25 few brief questions concerning this.

MORIOKA

CROSS

1 In this paragraph you have mentioned "puppet
2 government," the words "puppet government." I suppose
3 by these words you meant the North China Political
4 Council. Were this Council's policies concerning opium
5 different from those before -- from those of before?

6 A In 1938, when the provisional government was
7 established in North China, the government assumed an
8 over-all policy of prohibiting the use of opium as the
9 former Central Chinese Government had advocated in its
10 laws and ordinances. In 1940, I can't quite remember
11 the date, when the provisional government was renamed
12 the North China Political Council, they adopted a new
13 over-all policy which they had formerly been pursuing
14 and established new laws to that effect.

15 THE MONITOR: The new laws that were
16 established were the same as the old ones, but were
17 reissued as new law.
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MORIOKA

CROSS

1 Q I have received IPS document No. 1680
2 from the prosecution. Is this the Opium Suppression
3 Law of the North China Political Council, of which
4 you have just spoken?

5 (Whereupon, a document was handed
6 to the witness.)

7 MAJOR HUMMEL: If your Honor please, it is
8 requested that the witness be shown the original
9 document.

10 (Whereupon, another document was
11 handed to the witness.)

12 Q That is the original. I believe it will be
13 fairer if you examine the original.

14 A Although I have not read the contents in
15 detail, I believe that this is the ordinance.

16 Q Your affidavit mentions the Opium Suppression
17 Board. What was the extent of this Opium Suppression
18 Board? How many employees did it have?

19 A The Opium Suppression Board was composed
20 of the main office and the branch office in the local
21 districts. I don't quite remember the number exactly
22 in the main office, but including the Section Chief
23 I believe there is fifty or sixty.

24 THE MONITOR: Including the chief of the
25 board.

MORIOKA

CROSS

1 Q You have stated in your affidavit that Japanese
2 special commissioners participated in this Opium Sup-
3 pression Board. By the special commissioners do you
4 mean in Japanese Tzuan Yuan?

5 DR. KIYOSE: Not in Japanese, in Chinese.

6 INTERPRETER: In Chinese. I beg your pardon.

7 A I believe that the name "Japanese Special
8 Commission" is a mistake in translation. At the
9 interrogation I told the interpreter and also the
10 Chinese prosecutor that it meant Tzuan Yuan and I even
11 wrote the characters.

12 THE MONITOR: And I even wrote the characters
13 and explained what the word was.

14 Q How many of these Japanese commissioners were
15 there?

16 A As far as I can recollect there were only one
17 Tzuan Yuan. His name was INOUE.

18 Q Were there any other Japanese officials in
19 the Opium Suppression Board besides this Tzuan Yuan?

20 THE MONITOR: At the main office.

21 A As far as Tzuan Yuan is concerned, there was
22 only one, this INOUE which I have just mentioned.
23 However, there may have been other low officials work-
24 ing -- lower Japanese employees working under this
25 INOUE.

MORIOKA

CROSS

1 Q Were there many, or were there only a few if
2 there were any?

3 A Even if there were, I don't believe there were
4 more than one or two.

5 Q When you were in North China before and after
6 the establishment of the North China Political Council,
7 comparing before and after the establishment of the
8 North China Political Council, do you believe that the an-
9 nual consumption of opium was greater or lesser?

10 MR. KEENAN: I want to object to that ques-
11 tion as being an improper one on cross-examination
12 based upon the subject matter in the affidavit. This
13 witness was not asked questions pertaining to that in
14 the -- as appears in the affidavit.

15 THE PRESIDENT: There is nothing about quan-
16 tity in the affidavit. I think the question should
17 be disallowed; the objection should be allowed.

18 Q Then were the regulations which I just showed
19 you, the regulations which appeared in IPS 1680, fully
20 enforced by the activities of the Opium Suppression
21 Board?

22 A I regret to say that the conditions were so
23 that it was impossible to carry out fully these
24 regulations. This is because in territory occupied
25 by the Japanese Army in North China there was no stable

MORIOKA

CROSS

1 government to enforce those.

2 THE MONITOR: Political power of the govern-
3 ment was not thoroughly felt by the people at large.

4 A (Continued) Because the Chinese Communists
5 and others resisted the Japanese in the territory
6 occupied by the Japanese Army, it was impossible for
7 local administration, political administration, to be
8 carried out and, therefore, from the beginning to the
9 end it was impossible to enforce these opium regula-
10 tions in these local districts -- fully in these local
11 districts.

12 Q Was that the only cause?

13 A I believe there are several other reasons.
14 For example, in North China, to my knowledge, there
15 were many secret opium organizations, smuggling organ-
16 izations, and they were very powerful and their
17 activities were carried on in secret and it was very
18 difficult to break down these organizations or to
19 arrest them, arrest the smugglers.

20 Q Were there any other causes such as the
21 Japanese authorities in North China and the provis-
22 ional government encouraging the increase in consump-
23 tion of opium?

24 A The policy of the North China provisional
25 government was to prohibit the use of opium as the

MORIOKA

CROSS

1 former Chiang Kai-shek government had done because to
2 do otherwise would not -- if otherwise it would be
3 impossible to win the people, and in order to suppress
4 this the army, the police, and the military police
5 attempted its all to prevent this in China, and also
6 a regulation was issued so that Chinese who would
7 assume official posts could not do so if they were
8 opium addicts and **once they** were found to be opium
9 addicts they were relieved from their posts. These,
10 I believe, are the main reasons.

11 Besides this I believe that the Hsin-Min Society---

12 MR. KEENAN: Just a moment.

13 THE PRESIDENT: Well, we should have the
14 translation; we should have the translation, Mr. Chief
15 Prosecutor.

16 A (Continued) I believe that the Hsin-min Soci-
17 ety also organized a movement to discourage smoking of
18 opium.

19 MR. KEENAN: I was about to suggest if the
20 witness, in answer to the question, had given all the
21 reasons, that that ought to be the end of his answer
22 without projecting himself into further material.

23 Q This almost completes my cross-examination.
24 You have stated that the Chinese text of your affidavit
25 was quite different from the Japanese text of the same

MORIOKA

CROSS

1 affidavit. Small things aside, are there any major
2 points on which these texts differ?

3 A There are two main points which differ. First,
4 in regard to opium, the affidavit gives the impression
5 that there were many Japanese committees working under
6 this Opium Suppression Board, but this isn't so and
7 it is as I have stated a few moments before.

8 The second discrepancy is with regard to the
9 responsibility for the war. In regard to that question
10 I replied at the time that TOJO was responsible but --
11 and it is stated in the affidavit as though I had
12 known this before the outbreak of the war, which is not
13 so as I wasn't in such a position to gain such know-
14 ledge.

15 INTERPRETER: From reading the affidavit one
16 would gain the impression that I knew that TOJO had
17 advocated the war even before the war began, but this
18 is not so. I wasn't in such a position.

19 Q Where were you from last night to this morn-
20 ing?

21 A I was at home; I was at my home.

22 Q Were you watched by somebody or were you under
23 somebody's power?

24 A By that I don't know what you mean but last
25 night I was at home, as I usually am, and I slept as

MORIOKA

CROSS

1 usual, peacefully.

2 DR. KIOYOSE: That is all. That terminates
3 my cross-examination.

4 CROSS-EXAMINATION (Continued)

5 BY MR. FURNESS:

6 Q General MORIOKA, you were in my office, were
7 you not, from 9:30 to about 10:30 this morning?

8 A Yes.

9 Q And you were free to leave at any time and
10 not under custody, were you not?

11 A Yes.

12 Q Now, this affidavit which you made on March 24,
13 1946, was made at Peiping, was it not?

14 A Yes, I made it at Peiping.

15 Q And the questions were asked you in English,
16 is that correct?

17 A I was asked in English; I was questioned in
18 English.

19 Q And it was translated by an interpreter into
20 Japanese?

21 A As you say.

22 Q And the affidavit which was submitted to you
23 for signature was in Chinese, is that correct?

24 A As you say.

25 Q You do not read or speak English, do you?

MORIOKA

CROSS

1 A I can speak a little English but not as much
2 as to be able to speak with any responsibility on
3 official occasions.

4 Q So that **if** you signed the English version of
5 the affidavit you signed the document that you personally
6 didn't know what it contained?

7 MR. KEENAN: The prosecution objects to that
8 question. It is my understanding that he did not
9 sign any English version of the translation.

10 THE PRESIDENT: Well, it follows he did not
11 know what was in the English or the Chinese document.
12 It must have been only hearsay to him.

13 MR. KEENAN: With great respect, the prosecu-
14 tion would call the Court's attention -- it has had no
15 opportunity to do that before -- that this witness is
16 thoroughly conversant with the Chinese language. The
17 Chinese document contains a statement, is signed, and
18 it is offered in evidence in this case and, of course,
19 it is not hearsay.

20 THE PRESIDENT: If he understands Chinese,
21 if he can read it, it would not be hearsay. He appeared
22 to read it in the box certainly.

23 MR. FURNESS: It is not my intention, sir,
24 to imply that he doesn't speak Chinese.

25 THE PRESIDENT: Very well.

MORIOKA

CROSS

1 Q You did sign, did you not, two papers, one in
2 Chinese and one in English?

3 A As far as I can remember, I am sure I signed
4 the Chinese text but I don't believe that I signed the
5 English text.

6 MR. KEENAN: Mr. President, with great respect,
7 the prosecution suggests that we are wasting time
8 because the exhibit introduced is the Chinese document
9 and the matter of translation, or its correctness, can
10 be properly searched into with proper experts or the
11 auspices of the Court, but questions are being asked
12 and time is being wasted about documents this witness
13 never signed. He admits he signed the Chinese state-
14 ment. We believe it will not be contested that he is
15 thoroughly conversant with the Chinese language.

16 THE PRESIDENT: In view of the nature of the
17 allegations against the accused TOJO, particularly,
18 and the effect of the cross-examination to date, I
19 think we can afford to be a bit liberal. It may be
20 that the further cross-examination will be useless but
21 I don't think we should shut down on it.

22 We will recess now until half past one.

23 (Whereupon, at 1200, a recess was
24 taken.)
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AFTERNOON SESSION

1 The Tribunal met, pursuant to recess, at
2 1330.

3 MARSHAL OF THE COURT: The International
4 Military Tribunal for the Far East is now in session.

5 THE PRESIDENT: Major Furness.

6 S U S U M U M O R I O K A, called as a witness
7 on behalf of the prosecution, resumed the
8 stand and testified as follows:

CROSS-EXAMINATION (Continued)

9 BY MR. FURNESS:

10 Q General MORIOKA, do you read and write Chinese?

11 A I can read fairly well; but as to expressing
12 myself in perfect Chinese I am not quite as certain of
13 myself.

14 Q Then, you did not write this affidavit which
15 has been entered in evidence, but merely signed some-
16 thing which was prepared for your signature; is that
17 correct?

18 A The circumstances under which this affidavit
19 was written are as follows: Prosecutor Sutton ques-
20 tioned me in English, to which I answered in Japanese.
21 The Chinese prosecutor, Chiu, took down these answers,
22 wrote these answers, as I answered, and the Chinese
23 affidavit was drawn up in my presence and I read it.
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1 Prosecutor Sutton asked me if I could sign an affidavit
2 written in Chinese, to which I replied in the affirm-
3 ative, and thereupon I signed the affidavit.

4 THE PRESIDENT: That is enough, surely.

5 Q When did you leave Peiping and arrive in
6 Tokyo?

7 A On the 25th of May I left Peiping. On the
8 10th of June I reached Japan, and on the 12th of June
9 I arrived in Tokyo.

10 Q And you have been in Tokyo ever since. Is
11 that correct?

12 A On the whole I have been in Tokyo. At times
13 I have taken trips for about two or three days, but on
14 the whole I have resided in Tokyo.

15 Q Now, at the time that you were interrogated
16 by the prosecution, were you asked whether or not the
17 Japanese army or the Ko-A-In or the local North China
18 government had taken any steps to suppress opium?

19 THE PRESIDENT: Well, now, that is not a fair
20 question. It is for you to ask him whether any such
21 steps were taken, if you think he knows.

22 MR. FURNESS: I thought if he was asked that
23 question and answered it -- it was not included in the
24 affidavit -- it might be in point. However, I will
25 ask him that very question.

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1 Q You have testified that you were with the
2 Special Service Board and were liaison officer for the
3 local office of the Ko-A-In; and, therefore, I assume
4 that you are familiar with any steps taken with regard
5 to the handling of opium. I therefore ask you whether
6 any steps were taken to suppress the handling of opium?

7 A Concerning the suppression of opium in Japan-
8 ese occupied areas, when the Provisional Government of
9 North China was established it continued to enforce
10 the laws concerning suppression of opium which were in
11 force at the time of the Chiang Kai-shek government.
12 Later the Wang Ching Wei regime was established in
13 Nanking and the North China Provisional Government
14 became the North China Political Council. At this
15 time, as I have already testified, in August 1940,
16 this North China Political Council promulgated a new
17 ordinance suppressing opium.

18 Q And was that ordinance the Provisional Regu-
19 lations Relating to Opium Suppression in North China
20 which is included in prosecution's document 1680, which
21 you were shown this morning?

22 MR. KEENAN: I object to the question as
23 being repetitive in nature. As I understand, it has
24 been asked and answered previously.

25 MR. FURNESS: I merely want to identify what

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1 he is testifying to now is the same thing as he testi-
2 fied to this morning, sir.

3 THE PRESIDENT: Well, let him answer. There
4 may be some doubt. I do not think there is.

5 A The ordinance you have just mentioned was
6 one of the steps taken to suppress opium. Furthermore,
7 the Japanese army, the Chinese police, and the Japanese
8 gendarmerie and the Japanese consular police were used
9 to arrest opium smugglers. Furthermore, the Sing Ming
10 Society conducted propaganda to the effect that opium
11 was dangerous.

12 MR. FURNESS: I now ask that prosecution's
13 document No. 1680 be marked for identification as an
14 exhibit.

15 THE PRESIDENT: I see no reason why you
16 should not tender it straight out.

17 MR. FURNESS: I tender it in evidence.

18 THE PRESIDENT: Admitted.

19 DEPUTY CLERK OF THE COURT: Prosecution's
20 document No. 1680, tendered by the defense, is given
21 exhibit No. 435.

22 (Whereupon, the document above
23 referred to was marked defense exhibit
24 No. 435, and was received in evidence.)

25 Q Did the local Chinese government and the

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1 Japanese authorities also organize an opium suppression
2 board.

3 A As an all-out measure to enforce the suppres-
4 sion of opium, the Opium Suppression Board was estab-
5 lished. And in order to carry out these objects, the
6 above-mentioned ordinance was promulgated.

7 Q Was it the policy of the North China Political
8 Council and Special Service Division, the Ko-A-In, to
9 control and suppress the production and distribution
10 of opium?

11 A As you say.

12 Q And in carrying out this policy, did they
13 license the sale and license the use of opium in order
14 to effect such control and suppression?

15 A Opium addicts were registered and licenses
16 were given to them, and only those with licenses were
17 able to buy and to smoke opium. A special board
18 investigated their qualifications, and all those who
19 did not receive licenses were unable to buy or to
20 smoke opium. And if they violated these regulations
21 they were arrested.

22 Q And in issuing such licenses, was it the policy
23 to only issue them to addicts who could not be cured?

24 A In Articles 3 and 4 of the ordinance I have
25 mentioned before, it is stipulated that these licenses

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1 shall be granted only to old people over fifty and to
2 younger people if they are addicts and if they should
3 suffer, if their health should suffer if they should
4 suddenly cease smoking.

5 Q Is that what you mean when you state in your
6 affidavit that "under the puppet government, opium
7 could be openly sold and bought under the control of
8 the so-called Opium Suppression Board"?

9 MR. KEENAN: If the Court please, I object to
10 that question. We think that what the witness meant
11 by his language is for this Court to determine and not
12 for interpretation under the special circumstances of
13 this witness' appearance in court today.

14 THE PRESIDENT: The question would be unobjec-
15 tionable if it was put in this form: Was opium openly
16 sold only to confirmed addicts?

17 MR. FURNESS: Could I add to the Court's
18 question: ...who had been licensed to purchase by
19 sellers who had been licensed to sell.

20 THE PRESIDENT: Well, put a question on those
21 lines.

22 Q Was it the policy under these ordinances to
23 allow the sale of opium only to addicts who had been
24 licensed to purchase by sellers who had been licensed
25 to sell?

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1 MR. KEENAN: We object to that question.

2 A Just as you have stated.

3 MR. KEENAN: Is this light clear?

4 THE PRESIDENT: Yes. Go ahead.

5 MR. KEENAN: Prosecution objects to that
6 question on the ground that the law or ordinance speaks
7 for itself. Recourse to the document, exhibit 435, I
8 believe, will show that it is under the finance provi-
9 sions for collection of revenue. Otherwise, the law
10 itself will speak its own policy without interpretation
11 of this or any other witness.

12 THE PRESIDENT: What is the law in China is
13 a question of fact in this jurisdiction. But you have
14 set out in his affidavit that opium was sold openly.
15 That is an ambiguous expression which can be cleared
16 up. It may mean openly sold to everybody or openly
17 sold to some only. And Major Furness is entitled to
18 have that cleared up.

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G 2 MR. KEENAN: Mr. President, if the Northern
r 3 lights have finished, I would like to continue with
e 4 what I have to say. I do not know whether the system
n 5 is off or not. Can you hear me?
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& 7 THE PRESIDENT: I can just barely hear you,
B 8 Mr. Keenan. I think you had better wait until the
a 9 power goes on.
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11 MR. KEENAN: I think the current is on.
12 To make our position clear, Mr. President,
13 prosecution begs leave to agree with the Court that
14 the practice of how sales were made is pertinent,
15 or any ambiguity in the affidavit with reference to
16 the practice of sales is pertinent. But, this ques-
17 tion is cunningly devised: It asks this witness as
18 to the policy of this law. The law will speak for
19 itself.

20 We, therefore, object to the question in
21 this form and suggest that the proper inquiry might
22 be as to what this witness knows of the practice of
23 the sale. And, if this witness wishes to say that
24 "openly" means "selling to those who have licenses
25 and who comply with the law," we are willing to leave
that for ultimate question of credibility.

MR. FURNESS: If I was cunning, your Honor,
it was due to inadvertence rather than design. I

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1 would like to broaden the question. Could it be
2 read?

3 THE PRESIDENT: Omit any reference to the
4 law. Just ask him what were the facts. That is how
5 I put it to you, Major Furness, and that will be un-
6 objectionable.

7 BY MR. FURNESS (Continuing):

8 Q In your statement that "under the puppet
9 government, opium could be openly sold and bought
10 under the control of the so-called Opium Suppression
11 Board," do you mean that it could be openly sold to
12 persons licensed to sell -- to buy by persons licensed
13 to sell?

14 A Just as you say.

15 Q Was it the belief of the persons in the
16 Ko-A-In and the other persons dealing with this
17 matter that by permitting such sale under license
18 the use of opium could be suppressed as distinguished
19 from clandestine sales behind closed doors?

20 MR. KEENAN: Object to that question.

21 THE PRESIDENT: Will you read the question
22 again?

23 (Whereupon, the last question was
24 read by the official court reporter.)

25 THE PRESIDENT: What is your ground of

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1 objection, Mr. Keenan?

2 MR. KEENAN: The ground of the objection
3 is this witness interpreting the belief of an organ-
4 ization. I think he might be permitted to give his
5 own view on that subject, but I don't think he has
6 the right to interpret the views of others.

7 MR. FURNESS: I think the question is ad-
8 missible. I am not particularly proud of it.

9 THE PRESIDENT: I think the objection
10 should be upheld; but, as the Chief Prosecutor sug-
11 gests, you might ask the witness what was his view.

12 Q Was it your belief that, by permitting this
13 sale under license to persons licensed to buy, that
14 the use of opium could be suppressed as distinguished
15 from the clandestine sales behind closed doors?

16 THE PRESIDENT: What do you mean: Did the
17 licensing system --

18 MR. FURNESS: Result in control.

19 THE PRESIDENT: (Continuing) -- result in
20 prevention of illegal sales?

21 MR. FURNESS: Yes.

22 THE PRESIDENT: Well, did it, witness?

23 THE WITNESS: I believe that this system was
24 an effective measure in carrying out the policy of
25 suppressing opium as a whole. That is to say, by

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1 permitting the open sale of opium only to licensed
2 people, the control and suppression of opium as a
3 whole could be enforced.

4 Q It was impossible, was it not, to suppress
5 it entirely?

6 You testified this morning that some opium
7 was smuggled into the Japanese occupied territory.
8 Could you tell us whether those smugglers were of
9 Japanese or Chinese origin?

10 A Within my knowledge, opium smuggling is a
11 trade established in China from long ago, and opium
12 smugglers have a secret and complex organization.
13 Most of the smugglers were Chinese; a part of them
14 were Japanese and Koreans who had Japanese citizen-
15 ship. There were also citizens of other countries.

16 Q And during the time that the Chiang Kai-
17 shek Government was in control, was this same smugg-
18 ling -- and there were sales of opium, clandestine
19 sales of opium, were there not?

20 MR. KEENAN: Object to that as being cer-
21 tainly without the scope of the affidavit or the
22 testimony in it.

23 THE PRESIDENT: It is almost common knowl-
24 edge, of course, matters like that. The objection
25 is upheld.

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1 Q This morning, in answer to Dr. KIYOSE's
2 questions, you stated that the English translation
3 referring to Japanese special commissioners as par-
4 ticipating in the work of the Opium Suppression
5 Board was incorrect and substituted for "Japanese
6 Special Commissioners" a Chinese or Japanese term.
7 Will you tell us what that term was?

8 THE PRESIDENT: Do you ask him to repeat
9 an answer or part of an answer?

10 MR. FURNESS: No, sir. I just want to
11 find out what that term means in English.

12 THE PRESIDENT: Well, he is not proficient
13 in English.

14 MR. KEENAN: Mr. President, I had under-
15 stood the position was taken that this witness did
16 not speak English, but defense counsel seem to know
17 far more about the witness than we do; and I will
18 not press it if they tell us that they know that he
19 does speak English, because obviously he would not
20 be qualified to tell us what it means in English
21 unless he does have knowledge of that language.

22 MR. FURNESS: I know he does not speak
23 English; but I thought that the interpreters, when
24 he gave the Japanese word, might interpret it in
25 English.

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1 THE PRESIDENT: I do not think you are
2 taking your own cross-examination very seriously at
3 this stage, Major. But do consider us; we haven't
4 much time to spare.

5 By this time you may have induced the wit-
6 ness to explain away almost all that he said in his
7 affidavit, if not all of it, and he may not be of
8 much use for any other purpose.

9 BY MR. FURNESS: (Continuing)

10 Q Did the Japanese Government make any
11 efforts to cure opium addicts of the opium habit?
12 If so, what?

13 THE PRESIDENT: In view of this witness' per-
14 formance in the witness box, it may not be worth-
15 while to cross-examine him about those matter.

16 MR. FURNESS: There is just only one other
17 question.

18 Q Even after the general policy was put under
19 the Ko-A-In, was the administrative work with regard
20 to opium under the jurisdiction of the commanding
21 officer of the military division in the particular
22 area?

23 A The general administrative work concerning
24 opium was in charge of the Chinese Government in that
25 area. The policies decided by the Ko-A-In concerning

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1 opium were decided upon after consultation with
2 Japanese Army Headquarters on the spot; and, after
3 mutual agreement had been reached, this policy was
4 transmitted to the Chinese Government there.

5 Q The summons under which you came to this
6 Court required you to appear, did it not, at eleven
7 o'clock this morning?

8 A Originally, I had the intention of coming
9 at eleven o'clock without knowing whether I was to
10 appear in the courtroom itself or whether I was only
11 summoned for preparatory interrogations.

12 Q But the summons said to appear at eleven
13 o'clock, did it not?

14 A It merely said to come to room 38 by
15 eleven o'clock.

16 THE PRESIDENT: Is there any further
17 cross-examination?

18 Mr. Chief Prosecutor.

19 - - -

20 REDIRECT EXAMINATION

21 BY MR. KEENAN:

22 Q You have seen exhibit 401?

23 A I looked through it a short while ago.

24 Q Does it contain your signature in the
25 English language?

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1 A Yes.

2 Q Did you write that yourself or did someone
3 else write it for you?

4 A I wrote it myself.

5 Q Does the document 401 -- exhibit 401 --
6 contain your signature in the Chinese language?

7 A Yes.

8 Q And also in the Japanese language?

9 A This is the first time I have seen the
10 Japanese text. I never knew that a Japanese text
11 existed until today.

12 Q I did not ask you about the Japanese trans-
13 lation because the matter of translation into Japan-
14 ese or English is a matter to be corrected in this
15 courtroom. I am asking you if you signed your name
16 to this 401 document, the body of which is written
17 in Chinese -- if you signed your name in the Chinese
18 and Japanese character?

19 A I signed my name in Japanese. The Japanese
20 characters are the same as the Chinese characters.

21 Q How many pages are there to that exhibit
22 401 that had been handed to you before you now?

23 A Three pages.

24 Q How many times did you sign your name in
25 English and in Japanese and Chinese characters or

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1 that document?

2 A I signed once on each page.

3 Q Calling your attention to the last paragraph,
4 I am quoting: "The statement above was voluntarily
5 made by myself." Did you read that statement before
6 you signed three times, as you stated?

7 A Yes, I did read that.

8 Q Did you understand it?

9 A Yes, I understood them.

10 Q Was it and is it true?

11 MR. LOGAN: If the Tribunal please, unless
12 these questions are being asked by the prosecution
13 for the purpose of impeaching his own witness, we
14 object to them.

15 MR. KEENAN: Mr. President, if the purposes
16 of many of the questions asked in cross-examination --
17 if there were any purposes to them -- were directed
18 towards an effort to show that this witness in some
19 way was confused in what he said, we wish to show
20 that he made the statement voluntarily. And that's
21 only one of the questions; there are one or two more
22 for the purpose of showing it was done voluntarily
23 and after carefully reading, and that they record
24 the truth without mistake. That has been, I be-
25 lieve, at least by implication, questioned by the

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1 defense. If they concede that they make no contest
2 on that point, we certainly will attempt to shorten
3 this trial by asking no more questions along that
4 line.

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1 THE PRESIDENT: The difficulty is this, as
2 I see it, Mr. Chief Prosecutor. If he answers that
3 question "No," he incriminates himself according to
4 the law of China where he made the false affidavit.

5 MR. KEENAN: Mr. President, respectfully,
6 that is not the ground of the objection, and I would
7 suggest that, with the wise observation of the Court,
8 we might -- the witness might be informed that he
9 needs to answer no question that might incriminate
10 him, but otherwise we would like to have pertinent
11 questions replied to.

12 THE PRESIDENT: Then there is another objec-
13 tion. You are, in effect, treating him as hostile
14 and he has not been so declared.

15 MR. KEENAN: Mr. President, with great respect,
16 that is not the purpose of this interrogation. I
17 understand, and I may be in error, that the defense
18 has challenged this affidavit as representing the
19 views of this witness and I respectfully suggest that
20 under the rather unusual circumstances surrounding his
21 appearance in Court, that perhaps, too, the prosecution
22 might be allowed a little bit of liberty in attempting--

23 THE PRESIDENT: Then, strictly speaking, it
24 is new matter. It is not something arising out of
25 the cross-examination and which is directed to explain

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1 anything said in cross-examination, and the question
2 can be asked only with the permission of the Tribunal.
3 Above all, what is the practical value of a simple
4 affirmative answer to that question in view of the
5 cross-examination? Is not this Court going to be
6 determined by the nature and the effect of the cross-
7 examination and not by his simple "Yes" or "No" to a
8 more or less formal question. However, I speak for
9 myself only and the majority of the Court may desire
10 to allow you to ask the question.

11 MR. KEENAN: Mr. President, I do not think
12 it is of sufficient importance to take a great amount
13 of time and I withdraw the question.

14 BY MR. KEENAN: (Continued)

15 Q Mr. MORIOKA, were there any changes made
16 in the paper that you signed as it was prepared and
17 before you signed it?

18 A One or two corrections were made. There
19 were also a few parts where the Chinese and Japanese
20 meanings were different, but on the whole I considered
21 that the affidavit was correct and did not make any
22 further corrections.

23 Q Were those corrections made at your sug-
24 gestion before you signed it?

25 A I -- the corrections -- there are corrections--

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1 some corrections which I made myself with my own pen.
2 There are a few other places where the Chinese mean-
3 ing and the Japanese meaning were different, but I
4 left it as it was at the time.

5 For example, as I have already stated in
6 paragraph four of my affidavit, since the beginning
7 of the Sino-Japanese conflict in 1937, the Army
8 leaders, namely, General TERAUCHI, General SUGIYAMA,
9 General TADA, and General OKAMURA, all strongly
10 urged the prosecution of this war in China, but the
11 war against the U.S.A. and Great Britain was advocated
12 by TOJO. These lines, as I have already pointed out,
13 and as Mr. Sutton himself is aware -- at the time I
14 was interrogated this was not the way the questions
15 and answers went. The question was, "Who was re-
16 sponsible for the Pacific war?" and I simply replied,
17 "TOJO." Again concerning the China Incident, the
18 question was, "Who was responsible for the China
19 Incident?" and I replied, "KONOYE."

20 I see -- later I saw that the Chinese text
21 had been -- had used the words, "urged" and "advocated,"
22 but now, thinking it over, I see that if these words
23 are used, the question of from when they advocated
24 these things will arise.

25 MR. KEENAN: Is there any way of shutting

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off this waterfall of language?

THE PRESIDENT: We will recess now
for fifteen minutes.

(Whereupon, at 1445, a recess
was taken until 1500, after which the pro-
ceedings were resumed as follows:)

MARSHAL OF THE COURT: The International
Military Tribunal for the Far East is now resumed.

BY MR. KEENAN (Continuing):

Q Exhibit 401 that you have before you is
written in Chinese only, is that correct?

A Yes.

Q And the Japanese and English translations,
state whether or not you saw them before you came into
the courtroom today.

MR. LOGAN: If the Tribunal please, this
question has been asked of this witness and already
answered.

MR. KEENAN: I do not recall it has, your Honor.
I believe I know it to be a fact that he had only the
Chinese writing before him at the time his statement
was taken, but even though it may be repetitious -- I
hope it is not -- may the witness answer this question
for clarification?

THE PRESIDENT: Yes, because I do not recall

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1 myself whether it was or not.

2 MR. KEENAN: May I repeat the question so
3 the witness may not be confused?

4 THE PRESIDENT: Yes.

5 BY MR. KEENAN:

6 Q State whether or not you ever saw the
7 English or Japanese translation of exhibit 401
8 before you came into the courtroom?

9 A The Japanese text of this affidavit I saw
10 when Dr. KIYOSE handed -- had it handed to me in the
11 witness box this morning. As for the English text,
12 I have not yet seen it as a whole. Just before I
13 entered this courtroom I noticed the English text of
14 the affidavit lying on the desk of an American defense
15 counsel, but I did not read it.

16 Q So that you may state whether the corrections
17 that you said you made were corrections only to the
18 Chinese writing, exhibit No. 401?

19 A Only the Chinese text. I corrected it at
20 Peiping.

21 Q And the last statement reads as follows:
22 "The statement was recorded by Mr. Henry Chiu, and
23 that recording was read by myself and affirmed by
24 myself to be true without any mistake." Was that
25 contained in exhibit 401 before you signed it?

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1 A Yes.

2 Q Was that statement true?

3 THE PRESIDENT: You withdrew a similar
4 question before, Mr. Chief Prosecutor. It really
5 is not worthwhile.

6 MR. KEENAN: Mr. President, we have been
7 asked -- the statement has been made that this wit-
8 ness has not been declared hostile. The prosecution
9 will not declare a witness hostile unless it believes
10 under the circumstances of this nature that he has
11 committed perjury or is in contempt of court. Then,
12 and only then, will it declare a witness hostile; and
13 thereafter will ask that the witness be held, as we
14 intend to do in this Court, until an adequate invest-
15 igation be made to see if, in the interests of justice
16 and for the dignity of this trial, proper steps cannot
17 be taken as the circumstances shall warrant.

18 THE PRESIDENT: It is the Court that declares
19 it. In Australian and I think in all British juris-
20 diction, it is the Court that makes the declaration
21 of hostility.

22 MR. KEENAN: In our jurisdiction, Mr. Presi-
23 dent, that is done usually upon the challenge of the
24 party that offers the witness. I don't see that it
25 makes a great difference.

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1 THE PRESIDENT: May I just say this, Mr.
2 Chief Prosecutor. You were not merely asking this
3 witness to explain answers in cross-examination,
4 but you were directly challenging those answers.
5 You were saying, in effect, "weren't you telling
6 lies because didn't you make this statement that
7 your affidavit was true?" We must look at the
8 substance of things, and that was your attitude
9 undoubtedly. Of course, the need for declaring
10 a witness hostile on reexamination is not so great
11 because you are entitled to lead there; and when you
12 ask a witness whether what he said in an affidavit
13 was true, you are really challenging his veracity.
14 In other words, you are impeaching his credit.

15 MR. KEENAN: Mr. President, I think a
16 careful perusal of the cold record of the questions
17 that I have asked might lead this Court to come to
18 the conclusion that I am searching from this witness
19 to determine whether or not he made any error. I
20 know the purpose of this inquiry. I may not be
21 making it plain. I cannot object to my language
22 being interpreted as the Court sees fit, but I can
23 take exception to the Court stating what my purpose
24 is. I am not attempting at this time to impeach this
25 witness. I am trying to find out whether he should be

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1 impeached or not. I want to know if he understood what
2 he was signing.

3 THE PRESIDENT: I will simply hear what
4 you have to say and put it to my colleagues. It is
5 immaterial to me how it is decided. I can only state
6 the laws and the practices as I understand and I do
7 not want any heat introduced into any debate in this
8 Tribunal.

9 MR. KEENAN: Mr. President, the prosecution
10 at no time has stated that this witness lied or
11 uttered any abusive language to any witness, this
12 or any other. I am attempting to find out from this
13 witness whether he understood what he was signing
14 because the defense has directly, at least indirectly,
15 charged that there is some doubt in the witness' mind
16 as to what he was signing or the very import of it.

17 THE PRESIDENT: A majority of the Court
18 upholds the objection to the question, "Was it true..."
19 You may ask the question, "Did you understand what
20 you were asked to sign?"

21 MR. KEENAN: Did I correctly understand the
22 Court Mr. President, to state that the objection was
23 upheld or was overruled?

24 THE PRESIDENT: The objection is upheld insofar
25 as you ask the question of the witness, "Was it true

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1 that he did a certain thing?"

2 MR. KEENAN: I shall, of course, abide by
3 the ruling of the Court, but I beg leave to remind
4 the Court respectfully that in every case before
5 where a witness made an affidavit and it was filed
6 in this case and he was found to be present, the
7 question has always been permitted and has been
8 universally followed of asking the witness if he
9 did sign the affidavit, and if it were true. We
10 never have had an opportunity to do this before.
11 We are now departing from the regular procedure of
12 the Court, but I abide by the Court's ruling.

13 THE PRESIDENT: The circumstances are
14 entirely different on the previous occasions to which
15 you refer. No question was raised. There was no
16 objection. Moreover, there was no doubt then, no
17 debate as to the veracity of the witness. However,
18 the question is sharply raised, and we have to decide
19 it.

20 MR. KEENAN: In other words--

21 THE PRESIDENT: But we agree that you may
22 ask the witness did he understand what he was asked
23 to sign.

24 BY MR. KEENAN:

25 Q Exhibit 401, did you carefully read it and

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1 understand it in Peiping before you signed it?

2 A At the time it was already past one A. M.
3 I read the Chinese text, saw that it was on the whole
4 in line with what I had said, and signed it.

5 Q Am I to take that -- correction-- is the
6 Court to take that, Mr. MORIOKA, as your reply, that
7 you did understand it, or you didn't understand it?

8 A Please understand that I did understand its
9 contents -- the contents of the text.

10 Q The interview you had at Peiping in March
11 with Mr. Sutton, did you see anyone before the inter-
12 view took place that day concerning the matter involved?

13 A No.

14 Q And was the interview over that same day or
15 evening?

16 A The prosecutor came to my house at ten P. M.,
17 and I believe the interrogation was finished around
18 one-thirty the next morning.

19 Q And did you see anyone from the prosecution
20 from that day to this?

21 A No.

22 Q Or communicate with anyone from the prosecution
23 from that day to this?

24 A No.

25 Q When was the first you heard again concerning

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1 this matter after your return to Japan?

2 A This morning before coming to this Court I
3 dropped in the office of American defense counsel
4 and heard of this for the first time.

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1 Q What defense counsel?

2 A The person at your left.

3 Q There are several at my left. Major Fur-
4 ness here?

5 A Yes.

6 Q How did you happen to go to his office?

7 A Yesterday I received a notice from my local
8 police station that I was wanted at Room 38 of the
9 former War Ministry Building, this morning. Soon
10 after a messenger came from Dr. KIYOSE, saying that
11 he had given someone my address, but in order to
12 ascertain whether it actually was my address. I
13 told him that the address was as he had given and
14 that I had received a notice from the police.15 THE MONITOR: And that messenger went home -
16 went back.17 A (Continued) About 8:00 a.m. I left
18 my -- I believe it was around 8:00 a.m. this morning,
19 since I didn't know what I was being called about, and
20 since Dr. KIYOSE's messenger had come in order to
21 make sure my address, I dropped in at Dr. KIYOSE's on
22 my way to the War Ministry Building. As Dr. KIYOSE
23 was just then about to leave for the War Ministry
24 Building, I came together with him.

25 Q What time did you hear from the messenger

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1 from Dr. KIYOSE, what time in the morning?

2 A I went to Dr. KIYOSE's -- I called at Dr.
3 KIYOSE's house about 8:00 o'clock this morning, but
4 I don't remember when the messenger came -- just
5 exactly what time the messenger came.

6 MR. LOGAN: If the Tribunal please, we
7 object to further questions along the lines taken
8 by the Chief Prosecutor here, on the ground it was
9 not brought out on any - the subject matter on
10 which he is now examining was not brought out on
11 cross-examination, and furthermore we think it is
12 an attempt to attack this witness' credibility.

13 MR. KEENAN: Mr. President, originally the
14 propriety of the filing of this affidavit without
15 presenting this witness was brought to the attention
16 of the Court, at least by strong implication, by the
17 defense. We are attempting to find out the cir-
18 cumstances surrounding this witness' appearance in
19 the defense counsel's office when he was under sub-
20 poena to appear before the Court. We have had an
21 explanation from Dr. KIYOSE, which is not, to state
22 it mildly, is not entirely satisfactory at this time
23 to the prosecution as to its accuracy. And, Mr.
24 President, there is more than a faint suspicion of
25 this witness having shifted his views from the time

1 he made this affidavit until his appearance in this
2 court room, and we would like to inquire as fully
3 as the ethics of the occasion permit as to the cir-
4 cumstances and what caused, if anything, the shift
5 in his views and position.

6 THE PRESIDENT: Well, now, the position is
7 transparently plain. The prosecution challenges
8 the veracity, or the incredibility, of its own wit-
9 ness. The only thing left is whether Major Furness
10 should be disciplined. We have to hear Major Fur-
11 ness on that. We do not want any of these side
12 issues. We have enough to decide without that, but
13 we will discipline him if necessary.

14 MR. KEENAN: Mr. President, with the solemn
15 duty imposed upon the prosecution by this Charter
16 and myself as such Chief of Counsel, I find it my
17 duty to make inquiry with reference to what seems
18 to me a palpable change of position on the part of
19 a witness.

20 THE PRESIDENT: We are concerned, in the
21 first place, with the credibility, which you have
22 almost destroyed. We are concerned, in the second
23 place, with the conduct of Major Furness. If you
24 want that investigated we shall investigate it.

25 MR. KEENAN: Mr. President, with great

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1 respect for the Court, if the Court would indulge
2 me for a moment, it has been my habit and experience
3 as a prosecutor before I make charges to investigate
4 and to develop. I am making no charges at this time,
5 but I am inquiring of this witness about what appears
6 quite clear to me to be a shift of position upon his
7 part. I am sure the Court would not want to
8 accelerate or hurry the prosecution into the position
9 of making charges, and I am quite certain that the
10 Court is very anxious to know about all shifts of
11 position. I am asking questions objectively. I
12 have never mentioned Major Furness' name. I am not
13 responsible for these facts, but I shall attempt --

14 THE PRESIDENT: You didn't name Major
15 Furness, but the witness did in reply to you, Mr.
16 Chief Prosecutor. I do think, if I may make a sug-
17 gestion -- I hope I have the support of my colleagues -
18 that the witness now leave the box and that we for-
19 get all about Major Furness.

20 MR. KEENAN: And when we do, Mr. President,
21 the cold record will show that his name was brought
22 into this case by the witness and commented upon by
23 the President, and not by myself.

24 THE PRESIDENT: It would be impossible to
25 condemn Major Furness on the uncorroborated testimony

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1 of such a witness as that, in view of the prosecu-
2 tion's attitude towards the witness.

3 You are called upon, sir, Major Furness,
4 to explain nothing.

5 MR. FURNESS: I do not like, if your Honor
6 please, to have any implication charged that I at-
7 tempted to change this witness' position, to in-
8 fluence his testimony, or to bring out more than
9 what I considered the full truth and to which he
10 could testify truthfully. I make this statement so
11 that it will so appear upon the record.

12 MR. KEENAN: Mr. President, I want the record
13 to show that there has been no charge made by the
14 prosecution of misconduct on the part of any American
15 counsel in this case.

16 THE PRESIDENT: The witness may go, on the
17 usual terms.

18 (Whereupon, the witness was excused.)

19 THE PRESIDENT: I understand, Mr. Hauxhurst,
20 that you are about to open at some length on the next
21 phase, economic aggression in China and Greater East
22 Asia.

23 MR. HAUXHURST: Yes.

24 THE PRESIDENT: Under those circumstances,
25 we will hear your opening tomorrow.

1 We will adjourn now until half past nine
2 tomorrow morning.

3 (Whereupon, at 1550, an adjournment
4 was taken until Friday, 6 September 1946,
5 at 0930.)
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